

ESTTA Tracking number: **ESTTA709082**Filing date: **11/17/2015**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

| | | | |
|---------|--|-------------|-----------|
| Name | Jason P Petch | | |
| Entity | Individual | Citizenship | AUSTRALIA |
| Address | 195 Roberts Road Mornington, VIC, 3931 AUSTRALIA | | |

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|----------------------|--|
| Attorney information | Andrew D. Skale Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. 3580 Carmel Mountain Road Suite 300 San Diego, CA 92130 UNITED STATES adskale@mintz.com, jddib@mintz.com Phone:858-314-1506 |
|----------------------|--|

Registration Subject to Cancellation

| | | | |
|-----------------|--|-------------------|------------|
| Registration No | 4751342 | Registration date | 06/09/2015 |
| Registrant | Neit Enterprises Inc. 102-2655 Mary Hill Road Port Coquitlam, V3C6R9 CANADA | | |

Goods/Services Subject to Cancellation


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| Class 009. First Use: 2014/06/30 First Use In Commerce: 2014/06/30 All goods and services in the class are cancelled, namely: Global positioning system (GPS); Computer hardware and software system for tracking people, objects and pets using GPS data on a device on the tracked people, objects and pets; GPS tracking devices |
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Grounds for Cancellation

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| <i>Torres v. Cantine Torresella S.r.l.Fraud</i> | 808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986) |
| Priority and likelihood of confusion | Trademark Act section 2(d) |
| Other | Bad Faith |

Mark Cited by Petitioner as Basis for Cancellation

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|----------------------|-----------|-----------------------|------------|
| U.S. Application No. | 86716325 | Application Date | 08/06/2015 |
| Registration Date | NONE | Foreign Priority Date | NONE |
| Word Mark | SKY NANNY | | |

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|---------------------|--|
| Design Mark |  |
| Description of Mark | NONE |
| Goods/Services | Class 009. First use: First Use: 0 First Use In Commerce: 0 Global positioning systems (GPS); computer hardware and software systems used for tracking of people and objects; portable electronic markers for location of persons by tracking systems; electronic modules for incorporation into garments, clothing, accessories and headgear |

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| Attachments | 86716325#TMSN.png(bytes) Petition for Cancellation - SKYNANNY GPS.pdf(23993 bytes) |
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

| | |
|-----------|-------------------|
| Signature | /Andrew D. Skale/ |
| Name | Andrew D. Skale |
| Date | 11/17/2015 |

Jason Phillip Petch (“Petitioner”), an Australian citizen with an address at 195 Roberts Road, Mornington, VIC, AUSTRALIA 3931, believes that it is and will be damaged by the continued registration of the mark SKYNANNY GPS (“Petitioned Mark”), U.S. Registration No. 4,751,342. The Petitioned Mark is registered for “global positioning system (GPS); Computer hardware and software system for tracking people, objects and pets using GPS data on a device on the tracked people, objects and pets; GPS tracking devices.” (Class 9). Petitioner hereby petitions for cancellation of the above-referenced Registration pursuant to 15 U.S.C. §§ 1052, 1064 and 37 C.F.R. § 2.112. In support of this Petition, Petitioner alleges as follows:

FACTUAL BACKGROUND

1. Petitioner is the owner of U.S. Trademark Application Serial No. 86/716325 for the mark SKY NANNY for “Global positioning systems (GPS); computer hardware and software systems used for tracking of people and objects; portable electronic markers for location of persons by tracking systems; electronic modules for incorporation into garments, clothing, accessories and headgear” in Class 9 (the “Pending Application”).

2. Petitioner, Jason Phillip Petch (“Petch”), is the founder of SKY NANNY (see: <http://skynanny.net/>), a location device system which utilizes GPS, GSM, 3G and Bluetooth technology to track the location of children and communicate details via a Smart Phone software application.

3. Petch was prompted to develop the SKY NANNY product after losing his daughter Lucy on a crowded beach in October of 2011. At the time Lucy was 2.5 years old. Unable to locate his daughter and unaware of whether she was in the water or not, Petch was finally able to locate Lucy after about 5 minutes, but that time felt like an eternity to him.

4. Petch’s emotional response was heightened by memories of an unfortunate experience he was subjected to in 1977 as a 6 year old boy, when he and a neighborhood friend were abducted whilst playing on their skateboards in their street. Both children were held captive in the home of an elderly woman for 24 hours (one of the boys was left locked in a dark cupboard for hours on end), until the mentally ill woman’s son arrived home unexpectedly and alerted the police after discovering the two children.

5. A few weeks after losing his daughter Lucy on the beach in October 2011, Petch and his partner came across another parent who had also lost their child. Petch recognized his own state of panic mirrored in this emotional father and empathized as the circumstances were almost identical to that of his own experience a number of weeks earlier.

6. These experiences led Petch to search for a location device that would have functionality to locate his daughter if she ever went missing again. His idea was to find a device which could be worn by his daughter or attached to her clothing, which linked to an application on his Smart Phone to provide directions to her location. At the time there was nothing like it on the market. In fact, this type of technology that combined GPS, GSM, 3G and Bluetooth, to Petch's knowledge, had not existed.

7. Out of this experience, SKY NANNY was born. The SKY NANNY product has since attracted attention from neighboring consumer markets including the elderly, disadvantaged, and the motor vehicle industry.

8. Registrant saw Petitioner's product and contacted Petitioner about the product, prior to Registrant's use of the mark SKYNANNY GPS.

9. On information and belief, Registrant willfully and intentionally copied Petitioner's SKY NANNY mark.

**COUNT ONE:
PRIOR RIGHTS**

10. Petitioner re-alleges and incorporates herein by reference the allegations in the paragraphs above as if fully set forth herein.

11. Petitioner's rights in its SKY NANNY mark predate the June 30, 2014 date of first use claimed in Registrant's registration. Therefore, Petitioner has prior and superior rights in this matter.

12. Registrant mark for SKYNANNY GPS is confusingly similar to Petitioner's SKY NANNY mark and is used on goods identical with Petitioner's products. When used on the goods as set forth in Registrant registration, Registrant's mark SKYNANNY GPS is likely to cause confusion and mistake and to deceive purchasers and potential purchasers of Registrant's

goods and Petitioner's goods into erroneously believing that there is a relationship between Petitioner and Registrant, or that Petitioner has authorized, sponsored, or licensed Registrant use of the mark SKYNANNY GPS, in violation of 15 U.S.C. § 1052(d).

13. Continued registration of Registrant's mark will damage Petitioner since such registration will give color of exclusive statutory rights to Registrant in the mark SKYNANNY GPS in derogation and violation of the prior and superior rights of Petitioner.

**COUNT TWO:
FRAUD / BAD FAITH**

14. Petitioner re-alleges and incorporates herein by reference the allegations in the paragraphs above as if fully set forth herein.

15. Registrant's website, called SKYNANNY GPS (<http://www.skynannygps.com/>), shows use of a cartoon-like mascot that highly resembles that of Petitioner's SKY NANNY mascot which Petch had developed and incorporated. The SKYNANNY GPS website also incorporated a video on the homepage which referenced the name Lucy and made use of a number of similar marketing lines (see: <https://www.youtube.com/watch?v=pJCNncf0wrs>).

16. Upon discovering this website, Petch corresponded with the owner of SKYNANNY GPS requesting that Registrant remove the similar branding and use of Petch's daughter's name Lucy from the website. This resulted in a number of minor branding adjustments, however the use of the SKY NANNY brand, cartoon-like mascot, the name Lucy incorporated in their homepage video, all remained.

17. Petitioner has been forced to adjust his branding to his SKY NANNY product, in order to differentiate himself from the SKYNANNY GPS product and avoid consumer confusion.

18. Petitioner also discovered that SKYNANNY GPS had embedded into its website

a video produced by Petch for the SKY NANNY product.

19. On October 1, 2014, Registrant signed a declaration addressed to the Commissioner for Trademarks of the USPTO that stated in part:

The signatory believes that to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

20. Registrant signed this declaration knowing that Petitioner was using the mark and that Registrant had stolen the mark from Petitioner.

21. Accordingly, Registrant made a false representation to the USPTO.

22. Registrant's false representation was required to obtain registrability of Registrant's mark.

23. Registrant had knowledge that the representation was false.

24. Registrant made the representation with intent to deceive the USPTO.

25. Accordingly, Registrant obtained the registration for the mark via fraud and the mark should be cancelled.

26. Continued registration of Registrant's mark will damage Petitioner since such registration will give color of exclusive statutory rights to Registrant in the mark SKYNANNY GPS in derogation and violation of the prior and superior rights of Petitioner and could prevent Petitioner from obtaining federal registration of the mark SKY NANNY in the name of Petitioner.

WHEREFORE, Petitioner believes that it is and will be damaged by continued

registration of the mark SKYNANNY GPS, Registration No. 4,751,342, and, therefore, requests
cancellation of the Registration.

Respectfully submitted,

By: /Andrew D. Skale/

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Dated: November 17, 2015

Attorneys for Petitioner
JASON PHILLIP PETCH

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PETITION FOR CANCELLATION was served by U.S. mail, first class, postage prepaid, on this 17th day of November, 2015 on the Registrant at the address listed in the current U.S. Trademark Office Records as follows:

RAJ ABHYANKER
RAJ ABHYANKER, P.C.
STE 8
1580 W EL CAMINO REAL
MOUNTAIN VIEW, CALIFORNIA 94040

_____/Shelly Gause/
Shelly Gause